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Utah Supreme Court

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Recommended Citation

Reply Brief, *Packaging Corporation of America v. Morris*, No. 14517 (Utah Supreme Court, 1976).

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IN THE SUPREME COURT OF
THE STATE OF UTAH

PACKAGING CORPORATION OF AMERICA,

Plaintiff-Respondent,

vs.

WILLIAM W. MORRIS,

Defendant-Appellant.

Case No. 14517

REPLY BRIEF OF APPELLANT

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FILED

NOV 5 - 1976

Clark, Supreme Court, Utah

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IN THE SUPREME COURT OF
THE STATE OF UTAH

PACKAGING CORPORATION OF AMERICA,

Plaintiff-Respondent,

vs.

WILLIAM W. MORRIS,

Defendant-Appellant.

Case No. 14517

REPLY BRIEF OF APPELLANT
WILLIAM W. MORRIS

PRELIMINARY STATEMENT

This brief is submitted by Appellant William W. Morris (hereinafter "Appellant") in response to the brief of Respondent Packaging Corporation of America (hereinafter "Respondent"), and in light of the recently decided cases of Union Ski Company v. Union Plastics Corporation, 548 P.2d 1257 (Utah, 1976); Cate Rental Company, Inc. v. Whalen & Company, 549 P.2d 707 (Utah, 1976); and Chevron Chemical Company v. Mecham, 550 P.2d 182 (Utah, 1976). Appellant submits that the foregoing cases require a reversal herein and emphasizes that said cases were decided by this Court subsequent to the trial of the instant matter, inasmuch as judgment was

rendered herein in October of 1975, and the cited cases were decided in the Spring of 1976. Copies of the referenced cases are attached hereto.

REVIEW OF RESPONDENT'S STATEMENT OF FACTS

Respondent's statement of facts in its brief is inaccurate and states conclusions that are unfounded and misleading, which an examination of the trial transcript demonstrates. For example, on page 3 of Respondent's brief, it is stated that after Appellant signed the subject guaranty, he sent it to Milt Gordon ". . . for transportation to Respondent's plant in Salt Lake City, Utah." (R. 169, 1. 15-16) An examination of the record, however, indicates that on lines 15 and 16, Appellant testified as follows with respect to the guaranty: "As I recall I either gave it or mailed it to Milt Gordon". Respondent therefore added its interpretation to the record with respect to the words "for transportation to Respondent's plant in Salt Lake City" which is both wrong and misleading. Appellant testified only that the guaranty was given to Milt Gordon. On the same page of the trial record, at lines 17 through 27, Mr. Morris states, instead, that he signed the guaranty and gave it to Milt Gordon with the condition that William Birkinshaw should sign it too. Mr. Morris did not communicate that condition to Respondent but he did to both Mr. Gordon and Mr. Birkinshaw. He did not give it to "his agent" Milt Gordon, to transport it directly to PCA,

inasmuch as Mr. Gordon had no authorization to do so. While Mr. Gordon assisted Mr. Morris in overseeing his interests in Utah, he had no authorization either to negotiate or to sign a guaranty on behalf of Mr. Morris and was therefore not Morris' agent for the purposes of this action brought under UTAH CODE ANNOTATED, Section 78-27-23(2).

Mr. Gordon was unable to execute the guaranty for Mr. Morris and he had express instructions regarding its delivery. He was not conducting business for Morris, but was, rather, overseeing Mr. Morris' investment in the cookie factory as were "Mr. Birkinshaw and the other people at the Draper plant." (R. 168, l. 16-19) It is therefore clear that, if anything, a limited agency existed pertaining only to the delivery of the guaranty and the overseeing of Morris' investment. It was not Appellant's intent that the guaranty reach Respondent until and unless Mr. Birkinshaw signed it and Mr. Gordon had no power to bind Mr. Morris contrary to his instructions. The record clearly reflects this intent and Mr. Gordon's position, even though Respondent has confused the facts in its brief.

DISCUSSION

As previously indicated, the Utah Supreme Court cases decided subsequent to the trial of the instant matter and the preparation of Appellant's opening brief require a reversal herein because the trial court permitted the improper extension of jurisdiction over the

Appellant. Respondent's efforts to distinguish the foregoing cases fail inasmuch as those efforts attempt a distinction without a difference.

Cate Rental, supra, involved a Utah corporation and a Montana corporation who agreed by telephone to lease a front-end loader. Cate Rental attempted to assert long-arm jurisdiction over Whalen on the following grounds: (1) that defendant had been a customer of plaintiff for over ten years; (2) that defendant called plaintiff by telephone to discuss the rental or purchase of equipment on the average of five times a year during each of the previous ten years; (3) that plaintiff would ship equipment F.O.B. to its offices in Salt Lake City, and defendant would pay by mail; and (4) that defendant's president came to Salt Lake City in 1973 to discuss business dealings. Notwithstanding the on-going nature of the contacts, which even outnumber the contacts in the instant case, the Court found that the contacts were insufficient to warrant the imposition of jurisdiction because of the test of substantial activity with some degree of continuity within the state where it appeared. 549 P.2d at 708.

Respondent distinguishes Cate from the present case on the ground that the Appellant visited the state four times in two years that Milt Gordon who oversaw certain of Appellant's interests was present in the state and that Appellant made telephone calls to parties in Utah approximately once a week for about two years.

In comparing the two cases, it is submitted that the distinctions do not hold up. In the present matter, Appellant made telephone calls to Utah approximately once a week for about two years, and in Cate, defendant made five telephone calls a year over ten years. Apparently, Respondent would have this Court hold that one hundred telephone calls are sufficient to subject one to the Court's jurisdiction but fifty telephone calls are not. This is not a meaningful distinction. More relevant than this is the fact that in Cate, the contacts followed a regular ten year course, yet in the instant case the same kinds of contacts lasted over a period of only two years. In both cases, defendants entered the State of Utah. In Cate, the purpose was to discuss business dealings. Here, it was also to discuss business dealings, but not to discuss the guaranty in question. This guaranty was first mentioned by one of Respondent's employees by telephone to Appellant in Las Vegas, Nevada, and it was later sent to Las Vegas where it was signed. It was never discussed between them in Utah. (Respondent's Brief, p. 30; R. 99, 110)

It should also be pointed out that in Cate, a corporation had been conducting F.O.B. business involving heavy equipment in Salt Lake City for ten years. Here, we have a private citizen who executed a guaranty in Nevada. Admittedly, Mr. Morris did have some business interests in Utah. He had an "agent" in Utah to assist

him in overseeing those interests. Respondent astutely points out that no claim of lack of jurisdiction could be asserted if Respondent were suing Hawkeye Investment, a Nevada corporation, in the State of Utah, inasmuch as Hawkeye was conducting business in Utah and meets all of the jurisdictional requirements set forth in Hill v. Zale Corporation, 25 U.2d 357, 482 P.2d 332 (1971), (Respondent's Brief, p. 6) What Respondent neglects to articulate is that it is not suing Hawkeye Investment, it is suing Mr. Morris, an individual, on the guaranty signed by him in Nevada. Mr. Morris' business for the purposes of the Utah long-arm statute was, if anything, the signing of guaranties, not the baking of cookies. This business was conducted by Mr. Morris in Nevada. He had no agent empowered to sign guaranties for him in Utah. Mr. Morris' contacts with the State of Utah fail to satisfy any of the seven criteria set forth in Zale, supra. He had no local address or telephone, no employees, no advertising, no bank account, etc. His activities were not what the courts have termed "continuous and systematic"; the guaranty was executed in Nevada, and Respondent could easily establish jurisdiction over Morris in Nevada. The jurisdictional requirements are therefore lacking.

Cate is controlling, the contacts with Utah in Cate, while not quite as numerous as those in the present case, were as substantial and demonstrated a much stronger continuity than those found here.

On the basis of Cate, the opinion of the lower court should be reversed on the ground that that court lacked the proper basis for asserting jurisdiction over Appellant.

The second Utah Supreme Court case bearing on the jurisdictional issue is Union Ski Co., supra, decided by this Court on March 31, 1976. It involved an attempt by a Utah corporation ("Ski") to assert long-arm jurisdiction over a California corporation ("Plastics") in a suit for breach of contract. The Utah contacts as enumerated in Plastics' brief, pages 7, 8 and 9, were as follows:

Date of Event

Spring 1973	From the spring of 1973 until Dec. 1973 Brent C. Hall was General Sales Manager for Miller Ski of Orem, Utah
Summer 1973	<u>Plastics</u> CONTACTED Brent C. Hall in the summer of 1973 and commenced negotiations with Miller Ski for the manufacture of a plastic ski boot Plastics designed
August 1973	Hall instructed Miller Ski Distributor to ship boots currently used by Miller Ski to Plastics
November 1973	In November Earl Miller owner of Miller ski rejects project and Miller-Plastics negotiations cease
Dec 1, 1973	Brent C. Hall becomes part-time employee for Miller Ski and forms new company Sports Industries, Inc in Utah
December 1973	Plastics commences negotiations with Sports by telephone

Dec 28, 1973	Plastics general manager comes to Utah with a proposed written contract for Sports to distribute Plastic's boot. No agreement is reached
Jan 4, 5 1974	Plastics general manager comes to Utah on January 4 & 5 to negotiation (sic) contract. Plastics denies contract was "executed" January 5 but admits performance commenced
Jan 11 1974	Plastics while in Utah hire Utah artesian (sic) to work on boot. Messiers (sic) Wight Jr. & Sr. of SLC are hired
Hab 6-11, 1974	Sports Industries forms Union Ski Company Partnership; hires sales force; prints sales literature; plans national sales "kick-off" meeting
Jan 11, 1974	Plastics general manager speaks at "kick-off" meeting for about two hours (tape recorded by Sports for future meetings) about boot and how to sell it to customers. Literature about Plastics corp. organization distributed
Jan 15, 1974	Plastics negotiates \$25,000.00 check from Sports Industries which states on check: "initial payment on agreement dated Jan. 5, 1974"
Jan. or Spring 1974	Plastics general manager meets with Utah bank to establish joint account with Ski as part of financing plan. Account was not opened at that time as it was not yet needed
Feb 13, 1974	Union Ski is Incorporated & assumes contract rights
Jan 18 & Spring 1974	Ski commences trips to Calif. to <u>review progress of production</u> ; various trips were made on different dates

Mar 26, 1974	Plastic's employee, Allan Kinder, comes to Utah to discuss <u>design and products problems</u>
Early Spring 1974 Various dates	Plastics general manager attends several ski industry trade shows to help staff Union Ski's sales booth & distribute literature about his company & their manufacturing of boot
April 5, 1974	Artesian (sic), Franks Riggs, is hired by Plastics to do work on the project in March and in April Plastics general manager comes to Utah to review his work on the project
April 30, 1974	General Manager of Plastics writes report to his superiors and acknowledges receipt of \$218,000.00 worth of orders from ski
Unknown	The January 5, 1974 agreement is amended sometime in the spring of 1974 and several signatures were placed on the agreement on some unknown day

In Union Ski, this Court sustained the lower court in its finding that the proper basis for long-arm jurisdiction was lacking, holding that notwithstanding the above facts, it had not been demonstrated that defendant engaged in activities in Utah sufficient to render it subject to the court's jurisdiction.

Reviewing the facts in the present case, we find them strikingly similar but with a few significant differences. Similarities include the facts that: Morris was in Utah four times, at which times he visited Hawkeye Investment's plant; business negotiations were conducted by mail and telephone; a contract was signed out of state; and the enforcement of the contract was subsequently attempted in

Utah courts. A difference between this case and Union Ski is found in the fact that while Morris was in Utah, he at no time visited Respondent's plant, nor were any negotiations conducted in Utah between Morris and PCA regarding the guaranty which is the subject matter of this lawsuit. These negotiations took place while Morris was in Nevada, his state of residence. While Hawkeye had numerous contacts with PCA in Utah in the course of its business of making cookies, Mr. Morris had none. His sole contact was with regard to the guaranties. His "business", so to speak, with PCA was the making of guaranties, and the guaranty over which this controversy arose was negotiated and executed in Nevada. Sufficient contacts upon which to base long-arm jurisdiction over Mr. Morris in a suit by Respondent are therefore lacking. Another difference will be found in the fact that Union Ski involved a foreign corporation's contacts with the State of Utah while in this case we are dealing with an individual non-resident looking out for his own interests. He had business interests within the State of Utah which he personally looked after during his periodic visits to the state and through Milt Gordon, who assisted him in overseeing these interests, but these interests are not the subject matter of this lawsuit. The subject matter of this lawsuit is the guaranty signed by Mr. Morris in Las Vegas. As to this guaranty, he had neither the requisite contacts with

the state nor an agent empowered to negotiate it or execute it in the state. Union Ski can indeed be distinguished from the present case, but any meaningful distinction cuts against the finding of long-arm jurisdiction, not in favor of it.

The Utah Supreme Court in Union Ski cites the United States Supreme Court's warning against too extended an application of the recent decisions by that Court on long-arm jurisdiction. 548 P.2d at 1258. Such a case is presented here where the activities engaged in by Appellant relative to the guaranty which is the subject matter of this suit are not sufficient activity and do not reflect the degree of continuity required by Union Ski. Union Ski is controlling in this case, it represents the law regarding long-arm jurisdiction in Utah. Under Union Ski, jurisdiction should be found lacking in the present case inasmuch as Respondent failed to show that Appellant's contacts with the State of Utah were sufficient to confer the right to assert jurisdiction over him in the courts of this state and that jurisdiction cannot better be found elsewhere.

Mecham is the third and most recent Utah Supreme Court case dealing with long-arm jurisdiction. Mecham was a suit in Utah on a judgment granted against Mecham, a Utah resident, by an Idaho District court on a guaranty executed by Mecham in Utah.

Mecham was an officer of the Great Basin Grain Company located at Teton, Idaho, from the time of its formation until he

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disassociated himself from the company. Mecham, as an officer of said corporation, made one trip to Idaho where he discussed the internal affairs of the company. Two guaranty agreements were executed by Mecham with defendants in Utah, which guaranties were subject matter of the lawsuit. The court found that Mecham had never asserted a business presence in Idaho and had no business address in that state, nor did he ever have a telephone listing in Idaho. In denying the jurisdiction of the Idaho courts over Mecham, the Utah Supreme Court upheld the lower court in ruling that the Idaho courts had failed to obtain jurisdiction over Mecham through the Idaho Long-Arm Statute, a statute quite similar to the Utah statute.

This Court in Mecham set forth five guidelines for determining whether a state has jurisdiction over a given defendant, which are: (1) the nature and quality of contacts in the forum state; (2) the quantity of such contacts; (3) relationship of the cause to the contacts; (4) interest of the forum state in providing a forum for its residents; and (5) convenience of the parties. These guidelines are more or less along the lines of those set forth in Zale, supra. Guideline number (3) in Mecham, however, amplifies and clarifies the Zale criteria by focusing on the relationship of the cause of action to the contacts.

The foregoing focus is ignored by the Respondent in the instant case. Mr. Morris did have some contacts with the State of Utah. Mecham had some contacts with the State of Idaho. In Cate, the Montana corporation had some contacts with Utah. In Union Ski, Plastics, a California corporation, had some contacts with Utah. In each of these cases, jurisdiction was found to be lacking. In these cases, this Court talked in terms of the nature of the visits, local offices, or outlets, addresses, telephone listings, etc., as examples of substantial activity and continuity. Much of this was aimed at establishing a relationship between the cause of action and the non-resident's contacts with the State. This relationship was found lacking in Cate, in Union Ski, and in Mecham. It is also lacking in the instant case. There is no meaningful nexus between the activities of Hawkeye Investment, a corporation, in Utah and the signing of a guaranty by Mr. Morris, a Nevada resident, in Nevada. Mr. Morris did have limited contacts with Utah in his capacity of stockholder in a Nevada corporation doing business in Utah, but these are certainly less meaningful than those of Mecham with Idaho in his capacity of a corporate officer of an Idaho corporation. Both executed guaranties in the states of their residences, and in both cases in personam long-arm jurisdiction is lacking.

The only ground upon which Appellant can conceive that jurisdiction might be established is that of "alter ego", but as that was not plead and established below and was not raised on appeal here, it fails.

CONCLUSION

Respondent suggests that Appellant has engaged in generalities and has not shown specifically wherein the lower court erred. Rather Appellant showed specifically in its brief the points wherein the lower court erred and now, by this reply brief, demonstrates the veracity of its position in light of recent, important Utah Supreme Court decisions. It should be noted in connection with said decisions that they were decided subsequent to the trial of the matter and that the trial court did not have the benefit thereof. The lower court erred in attempting to assert jurisdiction over Mr. Morris. Therefore, Appellant Morris respectfully requests that the judgment of the lower court be reversed.

Respectfully submitted,

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Certificate of Service

The foregoing Reply Brief of Appellant William W. Morris was served upon Respondent Packaging Corporation of America by mailing, first class and postage prepaid, two copies thereof to its attorney, Lauren N. Beasley, of COTRO-MANES, WARR, FANKHAUSER & BEASLEY, at his offices at 430 Judge Building, Salt Lake City, Utah, 84111, this 5th day of November, 1976.

Mary Jane Martineau

without sufficient merit to justify extending this decision, or to reverse the judgment.

Affirmed. No costs awarded.

ELLETT and MAUGHAN, JJ., concur.

TUCKETT, J., dissents.

HENRIOD, C. J., does not participate herein.



CATE RENTAL COMPANY, INC.,
Plaintiff and Appellant,

v.

WHALEN & COMPANY, Defendant
and Respondent.

No. 14292.

Supreme Court of Utah.

May 5, 1978.

The Third District Court, Salt Lake County, Marcellus K. Snow, J., quashed attempted service on foreign corporation, and plaintiff Utah corporation appealed. The Supreme Court, Crockett, J., held that where foreign corporation in connection with leasing and purchasing heavy construction and mining equipment had called Utah corporation on average of five times a year for past ten years, Utah corporation shipped equipment f. o. b. and billed foreign corporation which paid by mail, and particular transaction was entered into by telephone call in customary manner, foreign corporation engaged in insufficient activities within Utah to subject it to jurisdiction under Utah long-arm statute.

Affirmed.

Maughan, J., filed dissenting opinion.

1. Courts ⇨ 12(2)

Long-arm statutory requirement of "transaction of business within the state" is that defendant has engaged in some substantial activity with some degree of continuity within Utah. U.C.A.1953, 78-27-5.

2. Corporations ⇨ 665(1)

Where foreign corporation in connection with leasing and purchasing heavy construction and mining equipment had called Utah corporation on average of five times a year for past ten years to discuss rental or purchase of equipment, Utah corporation would then ship equipment f. o. b. and bill foreign corporation which paid by mail, foreign corporation's president had been in Utah to discuss business dealings on one occasion in 1973, and particular transaction had been entered into by telephone call in customary manner, foreign corporation had engaged in insufficient activities to subject it to jurisdiction under Utah long-arm statute. U.C.A.1953, 78-27-5.

R. Collin Mangrum of Christensen, Gardiner, Jensen & Evans, Salt Lake City, for plaintiff and appellant.

Dean E. Conder, Stephen L. Henriod, of Nielsen, Conder, Henriod & Gottfredson, Salt Lake City, for defendant and respondent.

CROCKETT, Justice:

Plaintiff, Cate Rental Co., appeals from the granting of a motion to quash attempted service of summons upon defendant Whalen & Co., of Montana, under the long-arm statute.¹

From its Salt Lake City business, plaintiff, a Utah corporation, sells and rents heavy construction and mining equipment to customers in this state and throughout the intermountain area. Since 1962 defendant has been one of its customers in leasing and purchasing some of its equipment. This particular suit arose out of an

1. Section 78-27-5, U.C.A.1953.

agreement by a telephone call from the defendant in Montana to lease a front-end loader which was shipped to defendant's Montana job site in accordance with the defendant's instructions. Thereafter a dispute (detail not material here) arose between the parties and the plaintiff initiated this suit.

The activities relied on by plaintiff to give the Utah court jurisdiction are set forth in its brief. That defendant called plaintiff by telephone and discussed the rental or purchase of equipment on the average of five times a year for the past ten years. Plaintiff would ship the equipment f. o. b. its offices in Salt Lake City, and bill defendant, who would pay by mail. This particular transaction was entered into by a telephone call in the customary manner; and further, the defendant's president, Jerry Whalen, was in Salt Lake City to discuss their business dealings on one occasion in 1973.

The trial court agreed with the defendant's challenge to the Utah court's jurisdiction on the ground that the foregoing facts did not show sufficient activities or business presence within the state of Utah to subject it to the jurisdiction of our courts.

[1] It is our opinion that fairness and good conscience demand that we accord to citizens of other states who desire to make purchases here, or who may visit here or engage in any kind of transitory transactions, the same protections from possible harassment by long distance lawsuits as we expect to be accorded our citizens in similar circumstances in our sister states. Accordingly, the requirement of the statute of the "transaction of business within this state" is that the defendant has engaged in some substantial activity with some degree of continuity within our state.

[2] This case is very similar in pertinent aspects to the recently decided *Union Ski Co. v. Union Plastics Corp.*, 548 P.2d 1257 (Utah, 1976), in which we affirmed the trial court's dismissal for lack of jurisdiction of a suit for breach of contract by

a Utah corporation against a California corporation. A comparison shows that the defendant here had even less activities within this state upon which service under the long-arm statute could properly be based. The principles set forth in the *Union Ski* case are controlling here.

Affirmed. Inasmuch as defendant has not submitted itself to the jurisdiction of our court to ask for affirmative relief, no costs are awarded.

HENRIOD, C. J., and ELLETT and TUCKETT, JJ., concur.

MAUGHAN, Justice (dissenting):

The reasons for dissent are adequately stated in my dissenting opinion in *Union Ski Company v. Union Plastics Corporation*, 548 P.2d 1257, (Utah, 1976), to which reference is made.

Appropriate also is the following statement from 27 A.L.R.3d, *Jurisdiction Over Nonresident*, Section 3, page 418:

However, it can be stated safely that in most jurisdictions the trend is toward expanding jurisdiction over nonresidents. It has been said that this trend toward liberality is creative of a "minimum contact" rule as prerequisite to the exercise of power over nonresident defendants.

Under statutes predicated jurisdiction on the transaction of "any" business or merely on "transacting business," it has been held that the volume of business done by the nonresident in the forum state is not the only method by which the necessary contacts can be established. Moreover, the courts have recognized a distinction between activities of a foreign corporation which will bring the corporation within the jurisdiction of the local courts, and activities necessary to subject the foreign corporation to domestication.

This latter distinction, I believe, we have not made; and, in not doing so, have saddled residents with burdens not anticipated by our statute.

UNION SKI COMPANY v. UNION PLASTICS CORPORATION Utah 1257

Cites 518 P.2d 1257

UNION SKI COMPANY, Plaintiff
and Appellant,

v.

UNION PLASTICS CORPORATION,
Defendant and Respondent.
No. 14065.

Supreme Court of Utah.
March 31, 1976

Utah corporation brought action against California corporation to recover for damage allegedly suffered because of defendant's breach of contract relating to plan for defendant to manufacture ski boots. The Fourth District Court, Utah County, Allen B. Sorensen, J., granted motion of defendant, which had been served under the long arm statute, to dismiss for lack of jurisdiction over it and plaintiff appealed. The Supreme Court, Crockett, J., held that plaintiff failed to show that defendant had engaged in activities in Utah sufficient to subject it to jurisdiction of Utah courts.

Affirmed.

Maughan, J., dissented and filed opinion.

1011.

1. Courts ⇨12(2)

It is prerogative of state to set its own standards as to what contacts or activities within state are sufficient to meet requirements of long-arm statute, so long as they do not fall below requirements under adjudications based upon provisions of Constitution of United States. U.C.A.1953, 78-27-24, 78-27-25.

2. Courts ⇨12(2)

Transaction of business within long-arm statute requires that defendant engage in some substantial activity with some degree of continuity within state. U.C.A.1953, 78-27-24, 78-27-25.

3. Corporations ⇨673

Burden was upon plaintiff suing foreign corporation served under long arm statute to affirmatively demonstrate that

defendant had transacted business within the state. U.C.A.1953, 78-27-24, 78-27-25.

4. Appeal and Error ⇨911(3)

On appeal, Supreme Court indulged the presumption of verity and correctness of trial court's determination that foreign corporation had not transacted business in state so as to be subject to jurisdiction of Utah courts upon service under long-arm statute and determination would not be disturbed unless plaintiff showed that it was an error.

5. Courts ⇨12(2)

Generally it is more fair and logical to find jurisdiction in forum state when major aspects of activity out of which cause of action arises occur in that state and conversely, determination of jurisdiction in forum state is less likely to be found where principal activities take place elsewhere. U.C.A.1953, 78-27-24, 78-27-25.

6. Corporations ⇨673

In suit against foreign corporation to recover for damage allegedly resulting from defendant's breach of contract relating to plan for defendant to manufacture ski boots, plaintiff failed to show that defendant, served under long-arm statute, had engaged in activities in Utah sufficient to subject it to jurisdiction of Utah courts. U.C.A.1953, 78-27-24, 78-27-25.

J. Brent Wood, Provo, Dave McMullin, Payson, for plaintiff and appellant.

Douglas J. Perry, Salt Lake City, for defendant and respondent.

CROCKETT, Justice:

Plaintiff, Union Ski Company, a Utah corporation, brought this action against defendant, Union Plastics Corporation, a California corporation, to recover for damages allegedly suffered because of defendant's breach of contract relating to a plan for defendant to manufacture ski boots. Defendant was served as provided in section 78-27-25, U.C.A.1953, the so called Long-Arm Statute. From the granting of de-

defendant's motion to dismiss for lack of jurisdiction over it, the plaintiff appeals.

In the fall of 1973, Brent C. Hall, a Utah resident, visited the Union Plastics (Plastics) plant in California to discuss the feasibility of having Plastics manufacture a ski boot for Miller Ski Company, which then employed Mr. Hall. In November, 1973, Miller abandoned the project. However, Plastics had indicated some interest in the plan, so Mr. Hall and Arben K. Jolley, also a Utah resident, formed a new Utah corporation, Sports Industries, Inc., to market the boots which Plastics would manufacture. The name was later changed to Union Ski Company.

Negotiations between the two firms began in November, 1973, and, on December 28, 1973, Arthur Eizenberg, general manager of Plastics, came to Utah. The trip was primarily a ski vacation for Mr. Eizenberg and his family, but he did bring a proposed contract, which proved unacceptable to Ski. Mr. Eizenberg returned to Utah on January 5, 1974, when he met with Ski. An oral understanding was arrived at, which was to be completed in typewritten form, and then executed by the parties, which was not then accomplished. After some changes, the contract in controversy here was signed in April, 1974, by Plastics in California.

For Utah to acquire jurisdiction over the defendant, it would have to be on the basis of our statute, Section 78-27-24, U.C.A. 1953, which provides:

Any person . . . who in person or through an agent does any of the following enumerated acts, submits himself, . . . to the jurisdiction of the courts of this state as to any claim arising from:

- (1) The transaction of any business within this state;

- (2) Contracting to supply services or goods in this state; . . .

[1] It is the prerogative of this State to set its own standards as to what contacts or activities within the State are sufficient to meet the requirements of that statute, so long as they do not fall below the requirements under adjudications based upon provisions of the Constitution of the United States, cited and relied upon by plaintiff.¹ Notwithstanding the asserted trend toward liberality in allowing the acquisition of jurisdiction, with which this court is generally in agreement, it is significant to note that in *Hanson v. Denckla*² decided subsequent to those cases, the United States Supreme Court warned against too extended an application of those decisions:

But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [citation] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. [citations]

[1] It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. [citation]³

It is undoubtedly true that effect should be given to the policy declaration in our

1. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S.Ct. 150, 2 L.Ed.2d 223 (1957); *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

2. 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

3. *Id.* at pp. 251, 253, 78 S.Ct. at pp. 1238, 1240.

entity,⁴ that the jurisdiction of our courts should be extended to protect the citizens of this State consistent with concepts of fairness and equal justice under due process of law. But the other side of this coin is that the rule of law should also protect our citizens from suits in other states, unless they have engaged in some conduct or activity there beyond a mere casual or transitory presence therein; and concomitantly, that the residents of our sister states should be given the same protections here as we expect our citizens to be accorded there.

[2] In harmony with the foregoing this court has consistently held that the transaction of business within the meaning of our statute requires that the defendant has engaged in some substantial activity with some degree of continuity within this state.⁵ In the case of *Hill v. Zule Corp.*⁶ we set forth a number of examples of activity to be examined in determining whether, by reason of any one of them, or any combination of them, it can fairly and reasonably be said that activities of the foreign corporation in this State should subject it to the jurisdiction of our courts.

[3-5] In analyzing whether the plaintiff has shown that the defendant comes within that requirement, these propositions are to be considered: First, the burden was upon the plaintiff to affirmatively so demonstrate. Second, on appeal we indulge the presumption of verity and correctness of the trial court's determination and do not disturb it unless the plaintiff has shown that it was in error. Third, there is a further principle, recognized in this area of the law, which may be regarded as having some bearing on the trial court's determination here. That is, that it is generally thought to be more fair and

logical to find jurisdiction in the forum state when the major aspects of the activity out of which the cause of action arises occurs in that state; and conversely, that determination of jurisdiction in the forum state is less likely to be found where the principal activities (the execution of the contract, manufacture of the boots, and the payments therefor and defendant's alleged breach of the contract) take place elsewhere.⁷

[6] The main activity of the defendant relied upon by the plaintiff is that of Mr. Feizenberg. He visited Utah a total of four times: the two occasions previously mentioned, and again on January 11, 1974, and April 5, 1974. On the latter visits, Mr. Feizenberg attended meetings about the planning of sales after the boots should be manufactured, and he also inspected Ski's operations. Defendant Plastics did pay for some work done by three employees selected and retained by Ski. But Plastics did not have any business situs by way of office or store or otherwise in the State, nor any property, inventory, telephone listing or bank account; nor do any advertising here. Further, the contract on which plaintiff relies was executed in defendant's behalf in California; it provided that all payments would be made to Plastics' bank there, that all shipments would be F.O.B. Plastics' California plant, where the shoes were to be manufactured; and that the laws of California would govern the agreement.

When the foregoing facts are considered in the light of the principles above discussed and as set forth in the cited cases, we are not persuaded that we should disagree with the determination made by the trial court—that it was not shown that the defendant had engaged in activities in this

1. See Sec. 78-27-22, U.C.A. 1953.

2. *243 Financial Corp. v. Nevada Motor Rentals Inc.*, 529 P.2d 429 (Utah); *Banky v. Administrator of Estate of Jensen*, 534 P.2d 943 (Utah 1975); *Fensterstein General Agency v. Morgan*, 526 P.2d 1186 (Utah

1974); *Pellegrini v. Sachs & Sons*, 522 P.2d 704 (Utah 1974).

6. 25 Utah 24 357, 482 P.2d 332.

7. *Moore, Federal Practice*, Sec. 4:25 (2d Ed. 1967), and authorities therein cited.

State sufficient to render it subject to the jurisdiction of our courts.

Affirmed. No costs awarded.

HENRIOD, C. J., and ELLETT and TUCKETT, JJ., concur.

MAUGHAN, Justice (dissenting):

For the following reasons I dissent:

All statutory references are to U.C.A. 1953, as amended. Our statute, 78-27-22, declares:

It is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

The statute is a remedial one, and our law requires it be liberally construed; to effect its object, and to promote justice.¹ Aside from the statute cited in the footnote, its status as a remedial statute requires liberal construction. As was said in *Castle v. Delta I. & W. Co.*,² "Being remedial, the statute must be liberally construed."

1. 68-3-2. "The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the ob-

The court today fails to follow this law in several important particulars. It fails to recognize the legislative determination. It fails to recognize significant minimal contacts. If fails even to mention the obligations, viz., \$25,000, inter alia, to a citizen entitled to this State's protection. It fails to recognize the increased interaction between persons of this State and persons of other states. Not only does it not insure maximum protection to citizens of this State, it insures only minimal protection. It would appear that the statute has been reversed to require maximum contacts with this State, in order to insure minimal protection to its citizens. Patently, the statute is not applied to the "fullest extent permitted by the due process clause of the Fourteenth Amendment"—the construction given it not only is not liberal, but extremely restrictive.

It is, indeed, questionable to say (as the court does today); it is the prerogative of this State to set its own standards, for in personam jurisdiction over nonresidents, when the legislature has already set the standards, and such jurisdiction is completely dependent upon, and limited only by, the Federal constitution, viz., the Fourteenth Amendment. In this connection, it should not go unnoticed that the Continental Congress, moved by oppressive state measures, inimical to a union of the states convened the Constitutional Convention. A result of which brings to our legislature the power to set standards for in personam jurisdiction over nonresidents; to the "fullest extent of the Fourteenth Amendment." To hold otherwise, I believe runs counter to the due process clause of our own Constitution by denying due process of law to one of our citizens; which is not only not denied by our Constitution, but

jects of the statutes and to promote justice. Whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter the rules of equity shall prevail."

2. 58 Utah 137, 140, 197 P. 584, 585 (1921).

guaranteed by the due process clause of the Fourteenth Amendment.

The question here is primarily a federal one, and secondarily a state one, although the legislature has certainly given it prime importance. In addition, we do not have the problem of a statute attempting to restrict the Fourteenth Amendment; but rather one which endorses its operation to the full. Taking jurisdiction of the facts in this matter would fall far short of the permissible limits of the Fourteenth Amendment.

The mobility of the economy has changed much since the International Shoe case, of 1945; and the law relating to jurisdiction over nonresident defendants has changed with it—Utah excepted. The concepts dealt with here are of such importance I wish to present my view of the facts, and how the law is applicable to them.

The question on appeal is whether the activities of a foreign corporation, in dealing with a Utah corporation, render the foreign corporation amenable to the jurisdiction of the Utah court; under the long-arm statute. Prior to the foreign corporation's answer, it interposed a motion to dismiss, accompanied by affidavits; the plaintiff submitted counter-affidavits. The motion to dismiss for lack of jurisdiction was granted. No findings were made. I would reverse and remand for a trial on the merits.

The protagonists are plaintiff-appellant, Union Ski Company, a Utah corporation, hereafter "Ski"; and respondent-defendant, Union Plastics Corporation, a California corporation, hereafter "Plastics."

Ski and Plastics entered into a contract, under which a ski boot was to be manufactured by Plastics and supplied to Ski. The contract contemplated long-range payments of which \$25,000 was the initial payment—this initial payment was paid to Plastics by Ski. During the negotiations, the general manager for Plastics made sev-

eral trips to Utah, organized and conducted a sales meeting for the promotion of the boot, personally negotiated with representatives of Ski for the manufacture, promotion and sale of that product. Plastics also had its hand in the advertising of the product and demanded that its name be used in any promotional efforts.

The contract, dated January 5, 1974, contemplated a long series of transactions, with advance payments of \$75,000, beginning with 1974, purchases of ski boots totaling \$600,000 were to be made; by 1978 a sales figure of \$1,500,000 was to be reached. A memorandum by Plastics' general manager stated that Ski was to have the exclusive sales and merchandising operation, in return for which the advance payments of \$75,000 would be made. By April of 1974, Ski had secured orders for the boot amounting to \$218,000. No boots were supplied to Ski.

It is undisputed that Plastics received the \$25,000 check, and negotiated it. It is not disputed that the contract was executed, but it is disputed where and when it was executed. Ski claims that all significant indicia of minimal contacts in Utah, sufficient to confer jurisdiction on the Utah court, occurred in Utah; Plastics claims that such indicia occurred in the state of California, and that no significant activities were carried on in the state of Utah by Plastics to justify the Utah jurisdiction. The conflicts in the affidavits themselves would be sufficient to require a trial of the issues of fact.

Today, the court states that determination of jurisdiction in a foreign state is less likely to be found where the principal activities take place elsewhere, and mentions the execution of the contract (the record shows complete disagreement on the place of execution), manufacture of the boot, the payments therefor, and defendant's alleged breach of contract. These points together with the assertion that one must maintain a business situs, execute the contract, make the payments in the forum

state; and that all shipments should be otherwise than F.O.B. outside the forum state, were all disposed of 31 years ago in *International Shoe Company v. Washington*.³ There, in finding the state of Washington did have jurisdiction over a non-resident defendant, the court said:

Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in Saint Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

The "long-arm statute"⁴ gives us the pertinent definitions. "Any person" is defined to mean any individual, firm, company, association, or corporation. And "transaction of any business within this state" is defined to mean the activities of a nonresident person, his agents, or representatives in this State which affect persons or businesses within the state of Utah. Section 78-27-24 provides:

Any person . . . whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the

courts of this state as to any claim arising from:

(1) The transaction of any business within this state;

(2) Contracting to supply services or goods in this state;

* * * * *

In order to properly understand the mandate of the legislature, viz., that the long-arm statute "should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution," we must examine those decisions of the United States Supreme Court, determining that clause in relation to the long-arm statutes, and related statutes, of our sister states. This is necessary because it is not contemplated, in our federal system, that each of fifty different jurisdictional enclaves be a final arbiter of the meaning of the federal constitution in litigation, between citizens of different states.

One of the principles established in the famous case of *Pennoy v. Neff*⁵ was that a court could not acquire jurisdiction over a nonresident party, by serving process outside the forum, or by publication. The first definite departure from that case occurred in *International Shoe Co. v. Washington*⁶ where it was held there was jurisdiction over a nonresident party, not present within the territory of the forum; if that party had certain minimum contacts with the forum state, and if the maintenance of the suit did not offend "traditional notions of fair play and substantial justice." It was further held there that the terms "present" or "presence" merely symbolize the activities of a corporate agent, within the forum state, which will be deemed to be sufficient to satisfy the demands of due process; that an estimate

3. 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

4. 78-27-22 through 28, L.Utah 1968.

5. 95 U.S. 714, 24 L.Ed. 505 (1877).

6. 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

of the inconvenience incurred by defending a suit away from one's home state is relevant; that single or occasional acts of a corporate agent because of their nature and quality and the circumstances of their commission may be deemed sufficient to render the corporation liable to suit; that the satisfaction of the due process requirement depends upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process laws to ensure; that a corporation availing itself of the benefits and protections of the laws of the forum state, while accepting the privilege of engaging in activities therein, puts itself in a position where it may be made to respond to a suit to enforce obligations arising out of such activities—this can hardly be said to be contrary to common notions of justice and fair play.

International Shoe was the beginning of a trend, and in *McGee v. International Life Insurance Co.*,⁷ (which sustained the personal jurisdiction of California), the court, in commenting on this trend said:

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

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It is sufficient for purposes of due process that the suit was based on a con-

tract which had substantial connection with that State.

That the trend begun in *International Shoe* does not countenance the removal of all restrictions on the acquisition of personal jurisdiction by state courts is pointed out in *Hanson v. Denckla*⁸ where it was said that such restrictions amount to more than a guarantee of immunity from inconvenience or distant litigation, they are, in fact, a consequence of territorial limitation on the power of the respective states. It was pointed out that minimal contacts are necessary, and the sufficiency of the minimal contacts will vary with the quality and nature of the defendant's activity. Further, that a defendant purposefully availing itself of the privilege of engaging in activities within the forum state, invokes the benefits and protections of its laws.

Both *McGee* and *Denckla* were single occurrence cases. In *McGee* a Texas insurance company solicited a California resident, via mail, to purchase insurance; and the California resident accepted the offer, paid the premiums until his death, via mail. In *Denckla*, it was held that the Florida court did not acquire personal jurisdiction over a Delaware trustee to determine the validity of a trust established by a settlor, who while domiciled in Pennsylvania, executed a trust in Delaware, and subsequently moved to Florida. Such was not an activity of the quality and nature to establish minimal contact within Florida; nor was there an act by which defendant purposefully availed itself of the privilege of engaging in activities within the forum state, thus invoking the benefits and protections of its laws. *Denckla* draws the outer limit of state judicial power over a nonresident defendant. The activities of *Plastics*, in this matter, bear no relation to the limitation of *Denckla*. About the only similarity is each involves litigation, between a plaintiff and defendant.

From the foregoing it can be seen that the evolution of the law controlling state

7. 355 U.S. 220, 78 S.Ct. 1099, 2 L.Ed.2d 221

8. 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d

judicial power, over nonresident defendants, has evolved to accommodate changing conditions. This evolution shows acceptance and then abandonment of "consent," "doing business," and "presence," as conceptual determinants of state judicial power over foreign corporations.

As was said in *Foreign Study League v. Holland-America Line*⁹ cases of this nature are strictly factual and are disposed of by the application of case and statutory law of the fact situation presented. A review of the undisputed facts is helpful.

A contract was executed, \$25,000 was paid by Ski to Plastics; Plastics' agent conducted activities within this State to promote the sale of its product. These activities were in aid of the contract, which contemplated a series of long-term commitments, and payment of further substantial sums. The commitments to be performed in Utah were a sine qua non of the contract. Pursuant to the contract, Ski secured orders, within the state of Utah and elsewhere; in the amount of \$218,000, for the purchase of Plastics' product.

From the foregoing, we can see that Plastics purposefully availed itself of the privilege of acting within the state of Utah; thereby causing a consequence, with a substantial connection, in this State. It is further evident that Ski's claim arose from the activities of Plastics here. In addition, it is apparent that the acts of Plastics and the consequence caused by Plastics had a substantial connection to this State; a connection, which created contacts within this State, and makes the exercise of the jurisdiction of this State over Plastics reasonable. It cannot be doubted that this State has an interest in such activities, and in the protection of its citizens, from harm suffered because of such activities.¹⁰

A state case illuminating here is that of *Knight v. District Court of the 17th Judicial District, County of Adams, State of Colorado*.¹¹ There a Colorado bank brought an action in Colorado, on a promissory note, against two citizens of Salt Lake City, Utah, serving the petitioners in Utah. The action was brought under a long-arm statute similar to our own. The petitioners had personally appeared in Colorado to borrow the money. Thereafter a renewal note was executed by petitioners in Salt Lake City, and sent by mail to the bank in Colorado. The claim of petitioners was the Colorado bank did not have jurisdiction over their persons. Among other things the court said:

... though the "last act," such as the signing of a contract, for example, may have occurred outside the geographical confines of the forum state, nevertheless the statutory test of a claim arising out of the transaction of any business within the state may still be met by the showing of other "purposeful acts," performed within the forum state by the defendant in relation to the contract, even though such acts were preliminary, or even subsequent, to the execution of the contract itself. So, in the instant case, though the petitioners admittedly executed the renewal note in Utah, they had each nonetheless performed in Colorado several "purposeful" acts relative thereto. . . . it seems to us to be eminently fair and just to require the petitioners, who were able to come over the mountain to borrow \$30,000, to return when they are allegedly in default as concerns repayment of the loan.

In the instant matter, the mountain is a different one, but the principle is the same. Traditional notions of justice and fair play require Plastics to return and respond to the allegations of Ski.

9. 27 Utah 2d 442, 443, 497 P.2d 244 (1972).

10. *Southern Machine Co. v. Mohasco Industries Inc.*, C.A.8th 1908, 401 F.2d 374.

11. 162 Colo. 14, 424 P.2d 110 (1967).

ELLETT, Justice:

This lawsuit was initiated by Mr. Adams for the return of a boat and personal property and damages for the alleged wrongful taking and detention thereof. There is no claim of right for the taking and detention, if any, of personal property other than the boat.

The issue involved herein is the validity of a financing statement given to the appellant bank by the manufacturer of the boat which described it as a "Seaflyte 2200 Offshore # D.M.F.A. 0082 M-75L." The actual number of the boat is D.M.F.A. 0082 M-74L. The underscored numerals indicate the year during which the boat was manufactured. The serial number and description of the engine in the boat is correctly stated in the document.

The trial court gave a partial summary judgment in favor of the respondent on the ground that the "Financing Statement" was defective and the defect was sufficient to defeat the bank's security interest in the boat"

The trial court was in error in holding that the figures showing the year of manufacture invalidated the statement. An excellent article by Professor Boyce is found in 1966 Utah Law Journal at page 52 wherein the law is set out and cases cited. The article states:

The description of the goods required to be contained in a security agreement need not be so exact as to provide the reader of the instrument with specific knowledge of the property or collateral involved. The code provides that any description of personal property or real estate will be sufficient "whether or not it is specific if it reasonably identifies what is described. [70A-9-110] Thus, the requirement that personal property in the form of goods be described by serial number, or similar identification, is repudiated (1966 opinion, Utah Attorney General, 31).

The general law is also set out in 69 Am.Jur., Secured Transactions, Sec. 394:

Since the Uniform Commercial Code merely requires only such description as is sufficient to identify reasonably what is described, whether or not it is specific, it follows that the courts generally take a liberal approach to descriptions set forth in a financing statement, particularly where it is difficult to describe the property accurately. Accordingly, it follows that a court will overlook a failure to set forth a detailed description, including the serial number of the collateral, in a financing statement.

The partial summary judgment is reversed and the case is remanded to try the issues relating to the personal property other than the boat. Costs are awarded to the appellant.

HENRIOD, C. J., and CROCKETT, TUCKETT, and MAUGHAN, JJ., concur.



CHEVRON CHEMICAL COMPANY,
Plaintiff and Appellant,

v.

Craig W. MECHAM and R. Kent Melleson,
Defendants and Respondents.

No. 14423.

Supreme Court of Utah.

May 24, 1970.

Appeal was taken from judgment of the Third District Court, Salt Lake County, James S. Sawaya, J., which denied enforcement of Idaho judgments obtained against individual. The Supreme Court, Tuckett, J., held that individual who was officer of corporation located in Idaho, who gave guaranties to plaintiff to indemnify it against losses which it might incur on accounts with the corporation, who made

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Courts 12

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only one trip to Idaho and had no contacts with any customer or supplier or lending institution during that trip, and who never asserted a business presence in Idaho was not subject to jurisdiction of Idaho court under Idaho long-arm statute.

Affirmed.

Maughan, J., dissented and filed an opinion.

Courts (12/2)

Individual who had signed guaranties for the purpose of indemnifying company against losses which it might incur on accounts with corporation, located in Idaho, of which individual was an officer at the time, who had always been a resident of Utah, who made one trip to Idaho but had no contacts with any customer, supplier or lending institution on that trip, who never asserted a business presence in Idaho and had no business address there, and who never consummated a business transaction in Idaho as an individual was not subject to jurisdiction of Idaho court under Idaho long-arm statute with respect to the guaranties, which were not entered into in Idaho and which did not state that they were to be performed in Idaho.

Leonard J. Lewis and E. Craig Smay, of Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City, for plaintiff and appellant.

Frank J. Allen, of Clyde & Pratt, Ronald N. Boyce, Salt Lake City, for defendants and respondents.

TUCKETT, Justice:

The plaintiff is here suing on a judgment entered against the defendant Mecham on February 13, 1975, in the Seventh Judicial District Court of the state of Idaho. The action of the plaintiff in the Idaho court was in two counts, the first being on a guaranty agreement dated July 31, 1968. The second count consisted of an assigned cause of action by the Bank of Salt Lake to the plaintiff of a guaranty

agreement dated October 29, 1968. The District Court of Salt Lake County where the present action was filed entered judgment in favor of the defendant Mecham and the plaintiff appeals.

The two guaranty agreements were given to the plaintiff for the purpose of indemnifying it against losses it might incur on its accounts with Great Basin Grain Company, Inc., located at Tetonia, Idaho. The case went to trial in the District Court of Salt Lake County. That court made findings of fact which are not challenged on appeal. Among other things the court found that the plaintiff corporation was a Delaware corporation doing business in California, Oregon, Idaho, and Utah; and that the defendant Mecham has always been a resident of the state of Utah. The court further found that Mecham was an officer of the Great Basin Grain Company, from its formation until April, 1970, when he disassociated himself from the corporation and the plaintiff was so advised. The action in Idaho was brought against the defendant Mecham as an individual. As an officer of Great Basin, Mecham made one trip to Idaho but he had no contacts with any customer, or supplier, or lending institution but discussed with the defendant Heileson, president of Great Basin Grain, only internal affairs of the company. Mecham never asserted a business presence in Idaho and he had no business address in that state, nor did he have a telephone listing. As an individual Mecham never consummated a business transaction in Idaho. The court further found that the instruments sued upon in the Idaho action were prepared by the plaintiff in its Portland office and do not identify the state of Idaho as the place for performance. Mecham terminated said guaranty by notifying the plaintiff at its Portland office. Mecham made a special appearance in the Idaho proceedings to challenge the jurisdiction of that court, but nevertheless judgment was entered against him. The court further found that in respect to count two

ty executed by Mechem to the Bank of Salt Lake was for the purpose of guaranteeing an obligation of Great Basin to the bank. The instrument was prepared in Salt Lake City by the Bank of Salt Lake and executed there. The Bank of Salt Lake assigned its claim to the plaintiff for suit.

Jurisdiction of the Idaho court was asserted over Mechem by reason of Idaho's long-arm statute. That statute is quite similar to the Utah long-arm statute as well as the statutes of a number of other states. In determining whether or not the court of the forum state has jurisdiction, certain standards and guidelines have been enunciated by the courts of the various jurisdictions. Those standards include the following guidelines: (1) The nature and quality of contacts in the forum state; (2) quantity of such contacts; (3) relationship of the cause to the contacts; (4) interest of the forum state in providing a forum for its residents; (5) the convenience of the parties. The plaintiff in support of its claim that jurisdiction had been obtained over Mechem by the Idaho court relies heavily upon the case of *Salter v. Laxon*,¹ a decision of the United States District Court of Massachusetts wherein jurisdiction was upheld. In that case the defendant had organized the corporation which later became bankrupt, and for which he had become a guarantor, as its agent or alter ego. That court found that the defendant had organized, used, and controlled the bankrupt corporation for the sole purpose of carrying out his agreement with the bishop under which he was to receive 10 per cent and the bishop 90 per cent of the profits of certain nursing homes. The facts in this case are entirely dissimilar. The identical problem we have here was before this court in the case of *Van Kleeck Creamery, Inc. v. Western Frozen Products Company*,² which was also a suit upon the judgment entered by an Idaho court. It is interesting to note that the "long-arm statute" was the same as that in force in Idaho at the time the action against

Mechem was commenced in that state. The individual defendants in that case had far more contacts in the state of Idaho than did Mechem in this case. This court upheld a decision of the trial court that the Idaho court had failed to obtain jurisdiction over the individual defendants through its long-arm statute and concluded that the judgment entered in those proceedings was not entitled to full faith and credit in the state of Utah.

The record in this case supports the trial court's finding that the acts of Mechem in the state of Idaho were performed solely in his capacity as an officer of the Idaho corporation. We find no error in the record and the decision of the court below is affirmed.

HENRIOD, C. J., and ELLETT and CROCKETT, JJ., concur.

MAUGHAN, Justice (dissenting):

Reference is made to my dissents in *Union Ski Co. v. Union Plastics Corp.*, 548 P.2d 1257 (Utah 1976), and *Cate Rental Company, Inc. v. H'alcen & Company*, 549 P.2d 707 (Utah 1976).



The STATE of Utah, Plaintiff and Respondent,

v.

Emil Martin SUNTER, Defendant and Appellant.

No. 14363.

Supreme Court of Utah.
May 24, 1976.

The Seventh District Court, Carbon County, Edward Sheya, J., found defendant guilty of attempted burglary, and he appealed. The Supreme Court, Tuckett, J.,

held the possession or theft of the burglary.

Affirmed.

Indictment.

The opinion of the court is not an advisory opinion. 6-205.

Bryce J. and appeal.

Vernon Dorius, A. Ronald B. Price, for

TUCKETT

The defendant and judge Carbon County attempted burglary. 76-4-101 (C) defendant.

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¹ 204 F.Supp. 882.

² 24 Utah 24 63, 405 P.2d 544.